IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9412 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHANDU @ SANJAY LAKHMANBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 9412 of 2004

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2004

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 21-1-2004

passed by the Police Commissioner, Surat City, and he has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterized as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. Ms. Banna Dutta for Mr.A.R.Shaikh, learned advocate for the petitioner has submitted that four offences were registered against the detenu before Malaviyanagar Police Station. It is also submitted that two statements were recorded on 19-1-2004 and same were verified on 20-1-2004. She has raised specific contention that the detaining authority has not considered the aspect that if the detenu is actually involved in the offence, he would have been arrested and granting of his bail would have been opposed by the authority and if bail is granted, authority would have gone for cancellation of bail which aspect has not been considered by the detaining authority and, therefore, there is non-application of mind on the part of the detaining authority and, hence, continued detention is illegal. She has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic

Substances act, 1988, S.3(1)"

4. It seems from the above that there is non-application of mind on the part of detaining authority as the detenu was in judicial custody at the time of passing the detention order and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 21-1-2004 passed against the detenu Chandu @ Sanjay Lakhmanbhai Patel is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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